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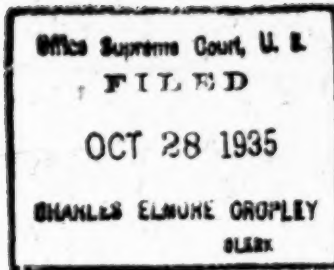
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IN THE

Supreme Court of the United States

OCTOBER, 1935 TERM

No. **149** ORIGINAL

THE STATE OF ARKANSAS Plaintiff,
VS.
THE STATE OF TENNESSEE Defendant.

MOTION FOR LEAVE TO FILE ORIGINAL BILL AND
THE ORIGINAL BILL.

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IN THE
Supreme Court of the United States

OCTOBER, 1935 TERM

No. _____ ORIGINAL

THE STATE OF ARKANSAS _____ Plaintiff
VS.

THE STATE OF TENNESSEE _____ Defendant.

MOTION FOR LEAVE TO FILE ORIGINAL BILL IN THE
SUPREME COURT, AS PROVIDED FOR BY ARTICLE
3 OF SECTION 2 OF THE CONSTITUTION OF THE
UNITED STATES.

TO THE HONORABLE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

Now comes the State of Arkansas, by its Attorney General, Carl E. Bailey, and moves the Court for leave to file the Bill of Complaint herewith exhibited in the above entitled cause, in a controversy which has arisen between the State of Arkansas, and the State of Tennessee, as to the location of the boundary of said State, as is more fully set out and described in said Bill and arising under the Constitution and laws of the United States for the purpose of determining the location of the boundary between said states; and that proper process may issue thereon, notifying the defendant of the filing of said Bill and requiring that it appear and answer thereto and defend the same.

THE STATE OF ARKANSAS,

By CARL E. BAILEY, Attorney General.

Dated, 21st day of October, 1935.

IN THE
Supreme Court of the United States

OCTOBER, 1935 TERM

No. _____ ORIGINAL

THE STATE OF ARKANSAS _____ Plaintiff
VS.

THE STATE OF TENNESSEE _____ Defendant.

ORIGINAL BILL OF COMPLAINT.

TO THE HONORABLE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

The State of Arkansas, by Carl E. Bailey, its Attorney General, for its cause of action against the State of Tennessee, respectfully states unto this Honorable Court, as follows, in two Counts, to-wit:

That the State of Tennessee was admitted into the Union of the United States of America by the Act of Congress of June 1st, 1796 (Chap. 47-1. Stat. 491), whereby the inhabitants of the newly created State of Tennessee were authorized to form for themselves, a State Constitution and to be admitted into the union, the boundaries of the then to be created state being, in so far as this action is concerned, on the west thereof, in conformity with the westerly boundary as described by the Treaty of Peace, concluded between the United States and Great Britain, Sept. 3, 1783, (8 Stat. 80), whereby the Territory comprising Tennessee passed to the United States, its westerly boundary being described (Art. 11) as "A line to be drawn along the middle of the said Mississippi River," the western boundary of said State, as admitted by said Act of Congress being described as the middle

of the Mississippi River.

That the State of Arkansas was admitted into the Union of the United States of America, by Act of Congress dated June 15, 1836 (Chap. 100, 5 Stat. 50), the boundaries of said State being as follows, to-wit:

Beginning in the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude, running from thence with the said parallel of latitude to the St. Francis River; thence up the middle of the main channel of said river, to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red River as by acts of Congress of the United States and the treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the boundary line of the State of Texas, to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river, to the thirty-sixth degree of north latitude, the point of beginning.

That prior to the admission into the Union, the said Territory now comprising the State of Arkansas, was a Territory which had been created by the Act of Congress of March 2, 1819, out of a part of that area known as the Missouri Territory, which, prior to the acquisition of the same by the United States, April 30, 1803, under the Treaty of the same date between the United States and France, known as the Louisiana Purchase, belonged to France, France having acquired the same by the Treaty of 1763, between England, France and Spain, (Art. 7, 3 Jenkinson's Treaties—177-182), whereby the boundary line between the British and French Possessions, so far as this action is concerned, was established as a "Line drawn along the middle of the Mis-

Mississippi River," with consequent recognition of the dominion of France over the said Territory now comprising the State of Arkansas, which said Dominion was in full force and effect up until the date of the acquisition of said territory by the United States under the Louisiana Purchase, aforesaid, April 30, 1803.

COUNT ONE

That on July 4, 1819, when the Act of Congress of March 2, 1819, creating Arkansas Territory became effective, the Mississippi River flowed between the State of Tennessee and the Territory of Arkansas, in so far as is material to this controversy, as follows:

From the foot or down stream end of Island 21, in a southerly direction about two miles, then made a sharp turn to the east and northeast and flowed in a northerly and easterly direction about six miles, then made another turn in a half-moon shape and flowed in a southerly direction for a distance of about three miles, then made a sharp turn to the west and flowed in a westerly and northwesterly direction about six miles, where it again resumed its southerly course.

At the points of beginning and ending of this particular bend, as above described, the caving of the river bank on the right or Arkansas shore of the river, both above and below the bend, had reduced the narrow neck of land to a width of approximately one-half mile and in February, 1821, the river suddenly broke through and across this narrow neck of land between said points of beginning and ending of said particular bend, above described, making a new channel across this said narrow neck of land. A map, being a photostatic copy of Mississippi River Chart No. 16, Young and Poussin's Survey, 1821, marked Exhibit "A" attached hereto, and made a part of this Bill, shows the shore lines and river channels as existed prior to the cutoff aforesaid, and subse-

quent thereto.

The sudden change above described was an avulsion and the area thus suddenly cut off from the Territory of Arkansas, became an Island, known as Needham's Island; and the water of the river subsequently receded from the old circuitous channel around said bend, leaving the old bed of the river a series of lakes and depressions that have been gradually filled up.

That by reason of the avulsion aforesaid, the boundary of the Territory of Arkansas became fixed at the channel or thread of the stream as it flowed immediately prior to the said cutoff around said bend, as shown by Exhibit "A" hereto, said channel being indicated on said exhibit by the arrow, and the dotted sandbar and solid bank lines, and said boundary line so established was the boundary line between the States of Arkansas and Tennessee on June 10, 1836, when the Territory became a State and the area in suit then became, and has at all times since, been a part of the State of Arkansas.

That the State of Tennessee claims all that body of land lying between the channel of the river as it flowed immediately prior to the avulsion aforesaid as shown by Exhibit "A" hereto, and the present channel of said river; and claims sovereignty and jurisdiction over said land; and that the line between said States is the present channel of said river at this point; whereas the State of Arkansas claims the line between said States is the position of said channel immediately prior to the avulsion aforesaid, as shown on Exhibit "A" hereto, and said State of Arkansas claims sovereignty and jurisdiction over said area.

There is therefore a controversy between said States of Arkansas and Tennessee with regard to the true boundary between said States at this point; and also a controversy in regard to their sovereignty and jurisdiction over this body of land; which said controversy involves the right of civil

and criminal jurisdiction in said area, and the right of taxation of said lands.

COUNT TWO.

That prior to the said avulsion of 1821, particularly described in Count One hereof, the said Mississippi River, at a point approximately twelve miles down stream, from the point of the aforesaid avulsion, was caving the right bank of Forked Deer Island, (otherwise known as Islands 26 and 27, consolidated), and that by reason of said avulsion, the river changed its course at said point and began caving the Arkansas shore opposite said Forked Deer Island, the Arkansas shore at that point being known as Canadian Reach; that said caving of the Arkansas shore, at said point, continued until said Arkansas shore at that point was revetted about the year 1896; that about the year 1904, the river at this point began gradually caving the head of Forked Deer Island and by a gradual and imperceptible process, said river changed its channel from the right or Arkansas side to the left or Tennessee side of Forked Deer Island, which is now the main channel of the Mississippi River at that point.

That during this gradual process of channel changing, certain land built in the abandoned bed of the river on the right or Arkansas side of Forked Deer Island; that at all times the nucleus of said formation of said land was on the right or Arkansas side of the channel of the river and are now, and have at all times been, within the State of Arkansas, and said lands so formed are a restoration of the area originally surveyed by the United States Government, in the State of Arkansas, as shown by plat of Township 12 North, Range 14 East, Fifth Principal Meridian, copy of which is attached hereto and made a part hereof, marked Exhibit "B." A map marked Exhibit "C" attached hereto, and made

a part of this bill shows the present location of said land above described and the approximate position of the line alleged by the plaintiff herein to be the true boundary line between the States of Arkansas and Tennessee at this point, and the approximate position of the line claimed by the State of Tennessee to be the boundary between said States.

That the State of Tennessee claims said land and that the State line is in the center of the Chute of the river shown on Exhibit "C" hereto lying west of an Island shown on said Exhibit "C" named Tellier Island and so designated on said Exhibit "C".

There is therefore a controversy between said States of Arkansas and Tennessee with regard to the true boundary between said States at this point; and also a controversy as to their sovereignty and jurisdiction over said body of land; which said controversy involves the right of civil and criminal jurisdiction in said area, and the right of taxation of said lands.

Citizens of the State of Tennessee owning land on Forked Deer Island, are claiming as an accretion to their land, all of said formation lying between Forked Deer Island and the Arkansas main shore, whereas the land is also claimed by citizens of the State of Arkansas under grants and deeds from the State of Arkansas and as restoration to their original deeds.

WHEREFORE, being without remedy on the law side of this Court, the State of Arkansas prays that the State of Tennessee be made a party defendant to this Bill and that the proper officers of said State of Tennessee be required to appear herein and answer the allegations hereof, but not on oath.

Your complainant further prays that this Honorable Court by proper orders and decrees establish the true boundary line between the State of Arkansas and the State of Tennessee, in Count 1 as follows: "A line running with the

sinuousities of the main channel of the Mississippi River, as the line around the horse shoe bend described in Count 1 in the year 1821 immediately prior to the cutoff and avulsion of February, in said year," as shown on Exhibit "A" hereto.

Your complainant further prays that this Honorable Court by proper orders and decrees, establish the true boundary line between the States of Arkansas and Tennessee in Count 2 as follows: "A line following point of union of the accretion to the Islands and Bars formed on the Arkansas side of the main channel of the river and accretions to Forked Deer Island, being the center of the depression separating said formations, the approximate position of which is shown on Exhibit "C" hereof in Count 2."

That the jurisdiction and sovereignty of the State of Arkansas to all the land and territory lying within the areas so established in Counts 1 and 2 be confirmed and established by decree of this Court; and that the said lines designated in Counts 1 and 2 be definitely located and fixed by this Court, and it is further prayed that a boundary commission be appointed to locate and designate said boundary lines between the said States of Arkansas and Tennessee, at the points herein specified in Counts 1 and 2, and that such boundary commission be required to make the proper examination and to delineate on maps prepared for that purpose, the true lines as determined by this Court, and to mark said lines with proper monuments; and that this Honorable Court grant the State of Arkansas such other, further and general relief as the merits of this cause may justify.

THE STATE OF ARKANSAS, PLAINTIFF,

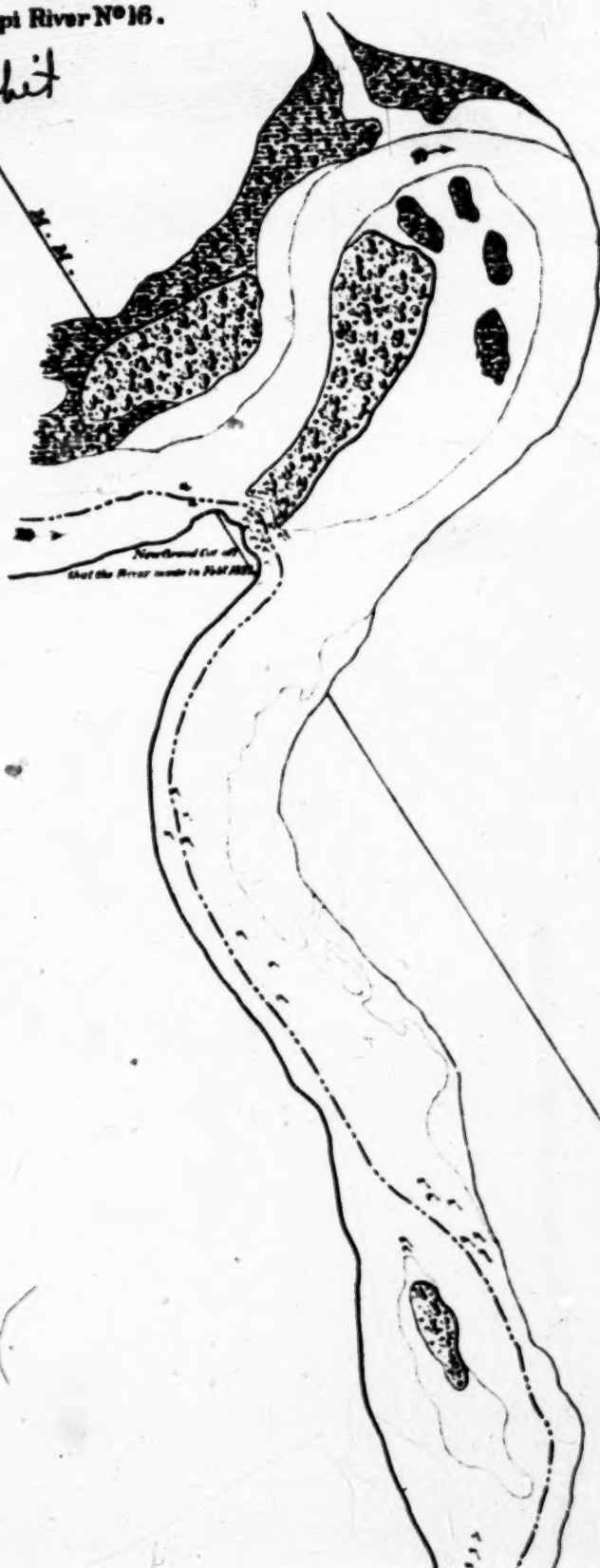
By **CARL E. BAILEY, Attorney General.**

**A. F. BARHAM,
IVY CRAWFORD,
D. F. TAYLOR,
D. FRED TAYLOR, JR.**

Solicitors For The State of Arkansas.

Mississippi River No 16.

Exhibit
"A"



Township 14 North of the Caroline Range 12 East of the principal meridian

Exhibit
"B"

Revised S.B. letter of 27 Oct. 1895.

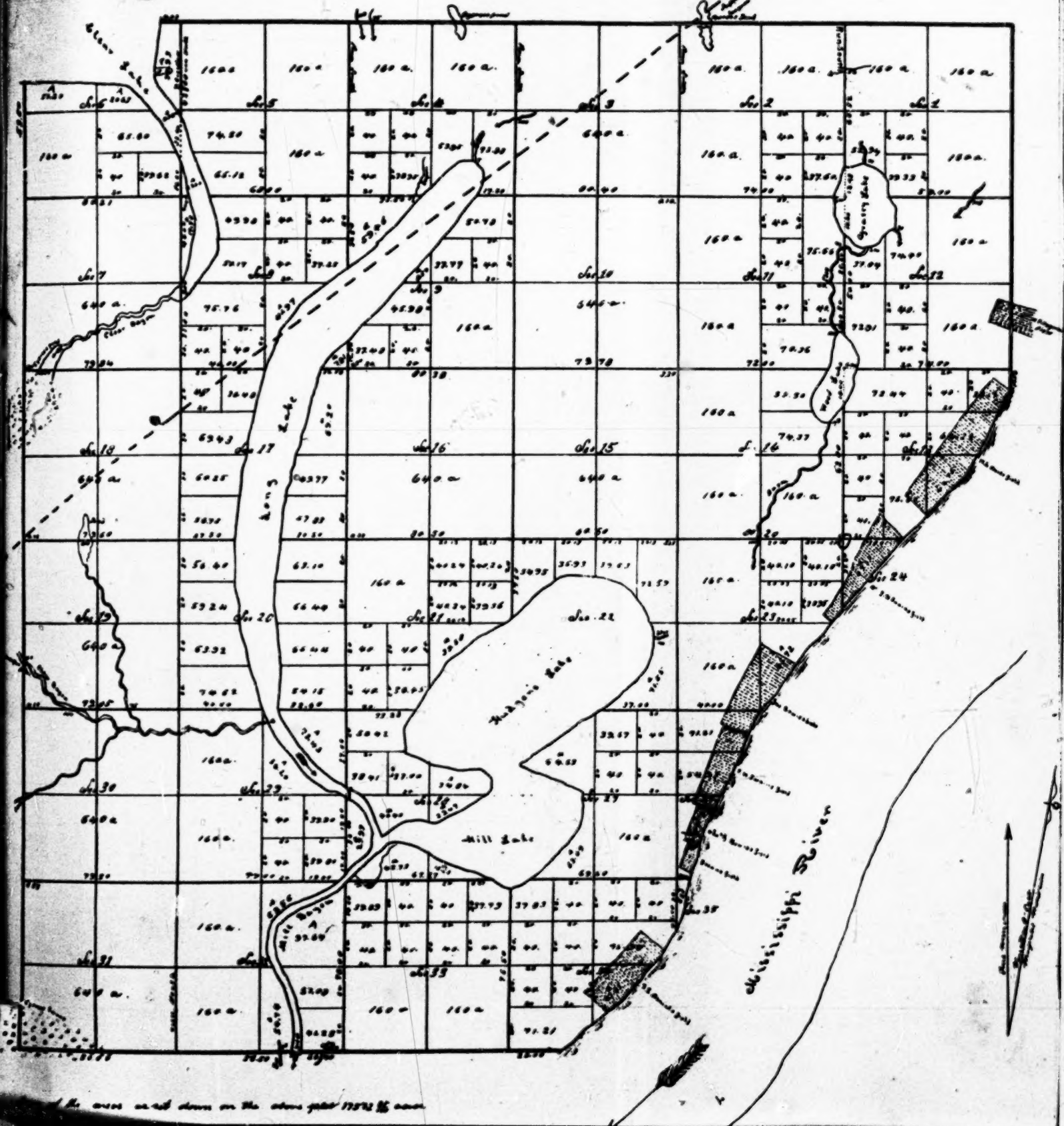


Exhibit
"C"

MAP OF
Formations in Mississippi River
in vicinity of Forked Deer Island
between River Miles 150 & 155
(July 1935)

Scale 1:25,000

Legend
--- Line claimed by Tenn.
--- Line claimed by Ark.

